

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

HERBERT JAMES JUBERT, #461268 §
 §
 § CIVIL ACTION NO. G-05-440
v. §
 §
DOUG DRETKE, DIRECTOR §
OF TDCJ-CID §

REPORT AND RECOMMENDATION

Before the Court is the Petition for a Writ of Habeas Corpus of Herbert James Jubert, a prisoner in the Texas Department of Criminal Justice - Correctional Institutions Division. The Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. §§ 2241 and 2254. The State has custody of Petitioner, who is attacking a judgment and sentence entered by the 212th District Court of Galveston County, Texas entered on July 28, 1987. Petitioner was convicted on a charge of burglary of a building and was sentenced to forty years imprisonment in the TDCJ-CID. He appealed his conviction, which was upheld on June 8, 1988. He did not file a Petition for Discretionary Review ("PDR"). The instant writ was filed in federal court on August 3, 2005.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") requires a prisoner to file his writ of habeas corpus in federal court within one year of the date on which the judgment becomes final or the time to appeal such judgment expires. 28 U.S.C. § 2244(d)(1)(A). However, prisoners whose convictions became final prior to the AEDPA's adoption on April 24, 1996 were given a one-year grace period in which to file federal habeas writs by April 24, 1997. *Fisher v. Johnson*, 174 F.3d 710, 712 (5th Cir. 1999).

Since the time for filing a PDR challenging Petitioner's conviction expired prior to the adoption of the AEDPA in this case, the limitations period for filing a federal writ expired on April 24, 1997. Petitioner did not file his state or federal writs until eight years after that date, and the instant habeas petition is barred from consideration by this Court.

Having conducted a preliminary review of the instant petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court **RECOMMENDS** the Petition for a Writ of Habeas Corpus of Herbert James Jubert (Instrument No. 1) be **SUMMARILY DISMISSED** as time barred.

The Clerk shall send copies of this Report and Recommendation to the Petitioner by the means in place for transmission of same. Petitioner shall have until **August 31, 2005** in which to have written objections, filed pursuant to 28 U.S.C. § 636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections shall be mailed to the Clerk's Office at P.O. Drawer 2300, Galveston, Texas 77553. **Any Objections filed shall be contained in a written document specifically entitled "Objections to the Report and Recommendation of the Magistrate Judge",** which will then be forwarded to the District Judge for consideration. Failure to file written objections within the prescribed time shall bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas, this 12th day of August, 2005.



John R. Froeschner
United States Magistrate Judge